

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 51 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYENDRABHAI RAMANLAL SHAH

Versus

AHMEDABAD MOTORS

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Appearance:

MR AJ PATEL for Petitioners

MR SN SHELAT, Ld. ADDL.ADVOCATE GENERAL with

MR.MV CHOKSHY for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/01/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.M.V.Choksi,  
learned Advocate with Mr.S.N.Shelat, learned Additional  
Advocate General for the Respondents.

2. In H.R.P.Suit No.708 of 1996 interim injunction  
Application Ex.5 was moved. The learned Judge of the  
Small Causes Court, Ahmedabad, passed following order on

10th September 1996 :

i. Application is rejected.

ii. The earlier order passed in terms of Para  
: 17(a) restraining the defendants from  
making any sort of construction of a  
show-room is hereby vacated.

iii. The defendants are directed to carry out  
the necessary repairing, alterations and  
construction on the suit land or in the  
existing structure in consonance with the  
municipal laws and after obtaining the  
necessary permission for the same they  
are entitled to carry out the alterations  
and repairing work in the existing  
structure.

iv. Considering the facts, no order as to  
costs."

3. The plaintiffs, who happened to be the landlords  
in the Suit carried the matter in Appeal from Order No.85  
of 1996. The learned Judges of the Appellate Bench by  
their order dated 30th December 1996 issued the following  
directions :

1. The order of the learned trial Judge  
below exh.5 dated 10.9.1996 is confirmed  
with the following further direction.

2. The defendants are further directed to  
declare on oath before the trial Court by  
filing an affidavit item wise the kind of  
necessary repairing, alterations and  
construction on the suit land or in the  
existing structure they propose to carry  
out. And they shall further declare on  
such affidavit that either they have  
obtained permission of the municipal  
corporation or that it is personally  
verified and ascertained by the  
defendants that such repairing  
alterations and construction as stated in  
the affidavit or any one or more of them  
for which permission is not obtained do  
not require any such permission and they  
shall further declare that any such

repairing alteration of construction as referred in the affidavit and made during the pendency of the suit shall not be taken as a defence against claim under section 13(1) (i) of the Bombay Rent Act in this suit in any form whatsoever.

3. Appeal is accordingly dismissed with no order as to costs."

4. The original plaintiffs have subjected the aforesaid orders to challenge in this Civil Revision Application No.51 of 1997 u/s.29(2) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 read with Section 115 of the Code of Civil Procedure, 1908.

5. After some amount of submissions the parties who are present in the Court and their learned Advocates expressed the following modifications to be made in the aforesaid orders :

Accordingly the respondents-tenants shall not extend the boundries of the existing construction and the directions contained in the impugned orders shall be confined to making of repairs and/or alteration and/or required construction in the existing construction. It is hereby further clarified that there shall not be any construction above the existing construction. The respondents have expressed that they will deposit the rent/mesne profit in the trial Court and it will be open to the appellant-plaintiffs to withdraw the said amount subject to contentions.

The trial Court shall make endeavour to hear and dispose of the Suit as expeditiously as possible.

Subject to what is stated above Rule is discharged with no order as to costs. This Civil Revision is accordingly disposed of.

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